REMARKS

The FINAL Office Action has continued to reject all claims 1-25. For at least the reasons set forth herein, Applicant disagrees and requests reconsideration and withdrawal of the rejections.

Rejections are Word-for-Word the Same as Last Office Action

Applicant submits that the FINAL Office Action is not fully responsive to Applicant's previous amendment. In this regard, pages 2-3 of the Office Action set forth a general response to Applicant's previous remarks. However, following that general response are pages numbered 2-18 (pages 2 and 3 are duplicatively numbered), which set forth the formal claim rejections. These formal rejections are word for word the same as the rejections set out in the previous (non-Final) Office Action, notwithstanding the fact that Applicant amended a number of its claims. Accordingly, the present rejections have apparently given no weight to the claim amendments.

Applicant continues to disagree with the rejections for at least the same reasons set forth in Applicant's previous response. Accordingly, Applicant hereby repeats and realleges the previous arguments as if set forth herein. In this regard, Applicant set forth a fundamental distinction of the claimed invention over the cited art. In addition, particular claim rejections were individually discussed.

With regard to independent claim 1, the Office Action rejected claim 1 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent 6,539,381. Claim 1 recites:

> 1. A method of replicating server-side state information among a plurality of collaborating servers connected to a network, the method comprising:

> *determining at a subscriber server from information stored on a client computer whether an event has been performed on a publisher server at the request of the client computer, which event implicates a need for state change on the subscriber server;* and
>   if such an event has been performed, *replicating state effects of the event* into state on the subscriber server.

(*Emphasis added*). At least the language emphasized above clearly defines over the cited '381 patent. In this regard, the Office Action (page 3) cited col. 3, lines 41-56 of the '381 patent as allegedly anticipating this claim. Applicant respectfully disagrees, for at least the reasons set for in the previous response. Likewise, Applicant disagrees with the continued rejections of claims 2-25 for at least the same reasons that were discussed in Applicant's previous response.

As it appears that this matter is headed for an appeal, Applicant sets forth additional comments below, which include a traversal of the rejections under 35 U.S.C. § 103, based on an improper motivation to combine the references.

This Office Action has rejected claims 2-25 under 35 U.S.C. § 103(a) as allegedly unpatentable over the combination of *Prasad* and U.S. Patent 6,549,916 to *Sedlar*. Applicant respectfully requests reconsideration and withdrawal of these rejections as failing to satisfy the requisite legal standards. In a number of instances (set forth below), Applicant substantively disagrees with the rejections. In addition to Applicant's substantive disagreement, Applicant respectfully traverses the alleged motivations for combining *Sedlar* with *Prasad*.

In this regard, it is well-settled law that in order to properly support an obviousness rejection under 35 U.S.C. § 103, there must have been some teaching <u>in</u> <u>the</u> <u>prior</u> <u>art</u> to suggest to one skilled in the art that the claimed invention would have been obvious. *W. L.*

Gore & Associates, Inc. v. Garlock Thomas, Inc., 721 F.2d 1540, 1551 (Fed. Cir. 1983).

More significantly,

> "The consistent criteria for determination of obviousness is whether the prior art
> would have suggested to one of ordinary skill in the art that this [invention]
> should be carried out and would have a reasonable likelihood of success, viewed
> in light of the prior art. ..." <u>Both the suggestion and the expectation of success</u>
> <u>must be founded in the prior art, not in the applicant's disclosure...</u> In
> determining whether such a suggestion can fairly be gleaned from the prior art,
> the full field of the invention must be considered; for the person of ordinary skill
> in the art is charged with knowledge of the entire body of technological
> literature, including that which might lead away from the claimed invention."

(Emphasis added) *In re Dow Chemical Company*, 837 F.2d 469, 473 (Fed. Cir. 1988).

In this regard, Applicant notes that there must not only be a suggestion to combine the

functional or operational aspects of the combined references, but that the Federal Circuit also

requires the prior art to suggest <u>both</u> the combination of elements <u>and</u> the structure resulting

from the combination. *Stiftung v. Renishaw PLC*, 945 Fed.2d 1173 (Fed. Cir. 1991).

Therefore, in order to sustain an obviousness rejection based upon a combination of any two

or more prior art references, the prior art must properly suggest the desirability of combining

the particular elements to create a system and method for maintaining consistent independent

server-side state among collaborating servers as claimed by the Applicant.

When an obviousness determination is based on multiple prior art references, there

must be a showing of some "teaching, suggestion, or reason" to combine the references.

Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ2d 1378,

1383 (Fed. Cir. 1997) (also noting that the "absence of such a suggestion to combine is

dispositive in an obviousness determination").

Evidence of a suggestion, teaching, or motivation to combine prior art references may

flow, <u>inter alia</u>, from the references themselves, the knowledge of one of ordinary skill in the

art, or from the nature of the problem to be solved. *See In re Dembiczak*, 175 F.3d 994, 1000,

50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be "clear and particular." _Dembiczak_, 175 F.3d at 999, 50 USPQ2d at 1617.

If there was is motivation or suggestion to combine selective teachings from multiple prior art references, one of ordinary skill in the art would not have viewed the present invention as obvious. _See In re Dance_, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); _Gambro Lundia AB_, 110 F.3d at 1579, 42 USPQ2d at 1383 ("The absence of such a suggestion to combine is dispositive in an obviousness determination.").

Significantly, where there is no apparent disadvantage present in a particular prior art reference, then generally there can be no motivation to combine the teaching of another reference with the particular prior art reference. _Winner Int'l Royalty Corp. v. Wang_, No 98-1553 (Fed. Cir. January 27, 2000). Well-established Federal Circuit case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. _In re Dembiczak_, 175 F.3d 994, 999 (Fed. Cir. 1999). Evidence of teaching or suggestion is "essential" to avoid hindsight. _In re Fine_, 837 F.2d 1071, 1075 (Fed.Cir.1988). A description of the particular "teaching or suggestion or motivation [to combine]" is an "essential evidentiary component of an obviousness holding." _C.R. Bard, Inc. v. M3 Sys., Inc._, 157 F.3d 1340, 1352 (Fed.Cir.1998). Indeed, in forming an obviousness type rejection, "the [Examiner] must identify specifically ... the reasons one of ordinary skill in the art would have been motivated to select the references and combine them." _In re Rouffet_, 149 F.3d 1350, 1359 (Fed.Cir.1998). The Examiner can satisfy this

burden of establishing obviousness in light of combination "only by showing some objective

teaching [leading to the combination]." *In re Fritch*, 972 F.2d 1260, 1265 (Fed.Cir.1992).

Simply stated, the Office Action has failed to comply with these legal standards.

Consequently, the rejections of claims 2-25 are legally improper and must be withdrawn.

Turning to the individual claims, claim 2 recites:

> 2. The method of claim 1, wherein the step of determining at a
> subscriber server from information stored on a client computer whether an
> event has been performed on a publisher server further comprises:
>   *receiving an event queue stored on the client computer to the*
> *subscriber server;*
>   *determining whether any events recorded in the event queue are*
> *not yet replicated on the subscriber server; and*
>   *determining whether any such events require replication on the*
> *subscriber server.*

(*Emphasis added.*) Applicant respectfully submits that claim 2 patently defines over the cited

art for at least the reason that the cited art fails to disclose the features emphasized above.

The Office Action cited col. 3, lines 44-51 of Prasad as allegedly teaching the first two

emphasized elements. Applicant respectfully disagrees. This portion or Prasad actually

states:

> ... The method comprises steps of storing, at a first server, a plurality of
> timestamps associated with a plurality of replicas located on each of the
> plurality of servers responsive to a change in a local replica at the first
> server, the change is transmitted to a second server, wherein transmission of
> the change depends upon a comparison of a timestamp of the replica of the
> first server and a timestamp of the replica of the second server. ...

While the Office Action admits that *Prasad* does not disclose an event queue, it can be

readily verified that the other emphasized features are not disclosed in this teaching of

Prasad either. In this regard, *Prasad* appears to simply perform a blind comparison of

timestamps associated with replicas of data to determine whether the transmission of a change

should be made.

Significantly, claim 2 requires *determining whether any such events require replication on the subscriber server.* The Office Action alleges that this teaching is taught in *Prasad* by the comparison of timestamps. Applicant disagrees. In paragraph [98] of the present specification, an "event queue" is defined as a mechanism that traces (or tracks) relevant client-driven events that impact state objects, which are to be synchronized. The specification further describes that "the contents of this event queue contain direct information as to why state change has occurred.... What has in fact changed can then be determined by replicating those events locally."

Further, paragraph [99] of the present specification describes a system in which one set of collaborating servers wishes only to track whether or not a user is logged-in over the course of a session, while another set of collaborating servers wishes to track the user's information (e.g., name, password, email address, etc.). If the user's information changes, only the second set of collaborating servers responds to that event; the first set ignores it on the basis of the event being of a kind in which the first set of servers has no interest. This is precisely an example of *"determining whether any such events require replication on the subscriber server"*. In *Prasad*, however, the event causing the transmission of state change in the first place is not distinguishable, and thus cannot serve as a basis for such selective replication.

In applying *Prasad* to reject claim 2, the Office Action has wholly ignored the "event queue" limitation of the claim, which is clearly improper. Further, the blind timestamp comparison that is apparently taught by the system of *Prasad* cannot properly perform the *"determining whether any such events require replication on the subscriber server"* feature of claim 2. On this basis alone, the rejection is improper and should be withdrawn.

In addition, the Office Action has formed an improper rejection under 35 U.S.C. § 103(a), by concluding that it would have been obvious to combine the alleged "event queue" teachings of *Sedlar* with *Prasad* simply because such a system "would be desirable in that the file system event notification mechanism allows a file cache to be proactively updated so that it always reflects the current state of the files at their original locations." (Office Action, pp. 3-4). Such a conclusory allegation by the Office Action is a clear violation of the well-established Federal Circuit precedent that has been set out above, as such a rejection embodies improper hindsight reasoning. As evidence of the impropriety of the combination of *Sedlar* with *Prasad*, *Sedlar* appears to disclose an event notification system for a file system. Although *Sedlar* does use the terms "event server" and "queue" managed by a database server, there is no applicable teaching or suggestion in either *Prasad* or *Sedlar* that would properly motivate one to combine their select teachings. Indeed, the fact that the system of *Sedlar* is wholly unrelated to replication of information across collaborating servers embodies a teaching away from the combination of *Sedlar* with *Prasad*.

Accordingly, for these and other reasons, Applicant respectfully traverses the combination of *Sedlar* with *Prasad*, and requests that the combination (and therefore the rejections of claims 2-25) be withdrawn.

The foregoing illustrates just one example of the deficiencies in the rejections of claims 2-25. As another example, consider claim 12. Among other limitations, claim 12 recites:

> 12. ...
>
> ...
>
> ***adding a new event descriptor characterizing the event to the event queue***; and
> sending the event queue from the publisher server to be stored on the client computer.

(*Emphasis added*). The Office Action summarily alleges that "*Prasad* teaches replicating state information of a first server to a third server." (citing col. 3, lines 25-40). Significantly, however, this claim element defines a feature that is different than merely replicating state information. In this regard, it specifically defines "adding a new event descriptor characterizing the event to the event queue." The Office Action has not even alleged an appropriate teaching within *Prasad* for teaching this claim feature. For at least this reason, the rejection is improper and should be withdrawn.

As a separate basis for the patentability of claim 12, the Office Action has failed to cite a proper motivation for combining the relevant teaching of *Sedlar* with *Prasad*. In this regard, the Office Action alleged that the combination would have been obvious because the resulting system "would be desirable in that the file system event notification mechanism allows a cache file to be proactively updated so that it always reflects the current state of the files at their original locations." The undersigned doesn't even appreciate the purpose for such an allegation, as claim 12 does not claim a "file cache" that is "proactively updated." Thus, the alleged motivation appears to be substantially unrelated to claim 12, and therefore ineffective for leading one to combine the allegedly-relevant teachings of *Sedlar* and *Prasad*.

The foregoing discussion of claims 2 and 12 present merely two examples of the misplaced rejections of claims 2-25. Based on these and similar reasons (including the allowability of the independent claims), the undersigned respectfully requests that all rejections be reconsidered and withdrawn. Should the Examiner maintain the rejections, then the undersigned intends to appeal this rejection to the Board of Patent Appeals.

CONCLUSION

Applicant respectfully submits that all claims are now in proper condition for allowance, and respectfully request that the Examiner pass this case to issuance. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this Amendment and Response to Office Action. If, however, any fee is deemed to be payable, you are hereby authorized to charge any such fee to Hewlett-Packard Company's Deposit Account No. 08-2025.

Respectfully submitted,

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